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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON**

In re:

GIGA WATT, Inc., a Washington
corporation,

Debtor.

Case No. 18-03197 FPC 11

The Honorable Frederick P. Corbit

Chapter 7

**OBJECTION OF THE CHAPTER 7
TRUSTEE TO MOTION TO
ENFORCE SETTLEMENT
AGREEMENT AND SUPPORTING
DECLARATION**

Mark D. Waldron, the duly-appointed trustee in the above-captioned chapter 7 bankruptcy case (the “Chapter 7 Trustee”) hereby objects (“Objection”) to the *Motion to Enforce Settlement Agreement* (the “Motion”) [[ECF 793](#)]. The Motion seeks an Order compelling the Chapter 7 Trustee to pay \$169,128.43 (the “Settlement Payment”) to Giga Plex LLC and MLDC 1 LLC (the “ML Landlords”) on an administrative basis and otherwise perform pursuant to the parties’ agreement (the “Settlement Agreement”), a copy of which is attached to the Motion as Exhibit A.

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1 Landlords began negotiating the different claims that both the Trustee, on behalf
2 of the estate, and the ML Landlords asserted against the other.

3 During the Spring and the Summer of 2020, the Trustee and the ML
4 Landlords shared a significant amount of information including accountings of
5 transfers between the Trustee and the ML Landlords as well as of pre-petition
6 transfers between the Debtor and the ML Landlords. During these negotiations,
7 the Trustee learned that the ML Landlords had encumbered the Giga Pods (mining
8 sheds) that belonged to the Debtor and possibly third parties, adding another layer
9 of issues to the negotiations. Later, the discussions expanded to include
10 EcoDiversified Holdings, Inc. who claimed to own a Giga Pod and who had sublet
11 land from the Debtor within the Moses Lake Facility.

12 Furthermore, before the Trustee could finally resolve the issues with the
13 ML Landlords, the Trustee had to first resolve the significant issues that existed
14 with the Allrise Financial Group (“Allrise”), which claimed to own one of the
15 Giga Pods within the Moses Lake Facility. After diligent efforts by the Trustee,
16 the Court approved the settlement with Allrise on September 24, 2020.

17 However, less than a week later, on September 30, 2020, the case converted
18 to one under chapter 7 and Mark Waldron was appointed as the Chapter 7 Trustee.
19 *See Order Converting Case to Chapter 7* [[ECF No. 744](#)]; *see also Chapter 7*
20 *Trustee Appointment* [[ECF No. 745](#)]. The ML Landlords and the Trustee had been
21 aware that the case would likely convert given that the United States Trustee’s
22 Office had moved to convert during the parties’ negotiations. *See Motion to*

1 *Convert the Chapter 11 Case to a Chapter 7*, filed on August 3, 2020 [[ECF No.](#)
2 [659](#)]. After the conversion, the Trustee told the ML Landlords that it was unlikely
3 that the Court would allow the Trustee to pay the Settlement Amount.

4 At the hearing on the Settlement Approval Motion, October 8, 2020, the
5 Trustee intended to raise the issue that the Settlement Agreement provided for
6 payment of Chapter 11 administrative claims, which were subordinate to Chapter
7 7 administrative claims and that the Settlement Agreement had been negotiated
8 by Mark Waldron as the Chapter 11 Trustee, not the Chapter 7 Trustee. Unfor-
9 tunately, the Trustee did not have an opportunity to discuss these distinctions,
10 because Jun Dam and his group disrupted the entire hearing with respect to a
11 separate motion to sell equipment that was scheduled for the same time.

12 Under such circumstances, the Trustee did not consider it appropriate to
13 upload an Order approving the Settlement Agreement. The ML Landlords and
14 the Trustee then agreed that the ML Landlords would file a Motion so that these
15 distinctions could be brought to the Court's attention.

16 **POINTS AND AUTHORITIES**

17 **A. The Distribution Priorities Changed Upon Conversion**

18 Section 726(b) of the Bankruptcy Code provides that administrative claims
19 incurred before conversion are subordinate to those incurred after conversion. In
20 particular, the statute states:

21 In a case that has been converted to this chapter [chapter 7]
22 under section 1112. . . of this title, a claim allowed under
23 section 503(b) of this title incurred under this chapter after
such conversion has priority over a claim allowed under

24 Trustee's Objection to Motion
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1 section 503(b) of this title incurred under any other chapter of
2 this title

3 11 U.S.C. § 726(b). Section 503(b) applies to administrative claims. Simply put,
4 administrative claims incurred under chapter 7 take priority over administrative
5 claims incurred under chapter 11. Therefore, until the Chapter 7 Trustee knows
6 the amount of administrative claims under Chapter 7, he cannot make a
7 distribution on a chapter 11 administrative claim, such as the Settlement Payment.

8 **B. The Chapter 7 Trustee Is Not a Party to the Settlement Agreement**

9 The Chapter 7 Trustee does not have authority to comply with the
10 Settlement Agreement because the Chapter 7 Trustee and the Chapter 11 Trustee
11 are different parties, despite the fact that the same individual has occupied both
12 roles in this case. The preamble to the Settlement Agreement (Exhibit A to the
13 Motion) defines the “Trustee” as the Chapter 11 Trustee. After conversion, the
14 Chapter 11 Trustee no longer existed and the Chapter 7 Trustee assumed
15 responsibility for liquidating property of the estate and resolving claims. *See In re*
16 *Radical Bunny, LLC*, 459 B.R. 434, 443 (Bkrcty. D. Ariz., 2011) (“[T]he duties of
17 a Chapter 7 trustee and a Chapter 11 trustee are very different.”); *In re Financial*
18 *Corp. of America*, 114 B.R. 221, 225 (9th Cir. BAP (Cal.),1990) (“[T]he services
19 performed here by the Chapter 11 trustee differ significantly from those that will
20 be performed by the Chapter 7 trustee.”). The Settlement Agreement was
21 negotiated in the very different context of a chapter 11 case. Despite the Trustee’s
22 diligence, the case converted before the Trustee could finalize the Settlement
23 Agreement by obtaining Court approval.

1 **CONCLUSION**

2 WHEREFORE, the Trustee respectfully requests that the Court deny the
3 Motion in its entirety and grant such other and further relief as the Court deems
4 appropriate and just.

5 Dated: November 27, 2020

POTOMAC LAW GROUP PLLC

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7 By: /s/ Pamela M. Egan
8 Pamela M. Egan (WSBA No. 54736)

9 *Attorneys for Mark D. Waldron, Chapter 7*
Trustee

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11 **DECLARATION**

12 I, Mark D. Waldron, hereby affirm under penalty of perjury that I have
13 personal knowledge of the facts set forth above and they are true and correct.

14 Executed this 27th day of November 2020 in Tacoma, Washington.

15
16 /s/ Mark D. Waldron

17 Mark D. Waldron, *as Chapter 7*
18 *Trustee*